



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

September 20, 1990

Honorable Richard A. Smith
Chairman
Public Safety Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

LO-90-63

Dear Representative Smith:

You have requested our opinion as to whether subsection (b) of section 711.009 of the Health and Safety Code limits the exercise of the powers granted in subsection (a) to a cemetery and the areas near a cemetery. Section 711.009 provides:

(a) The superintendent, sexton, or other person in charge of a cemetery has the same powers and duties granted by law to:

(1) a police officer in the municipality in which the cemetery is located; or

(2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce cemetery association rules, state law, and municipal ordinances, in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

In Letter Opinion 89-9 (1989), we considered whether a "sexton," as used in article 912a-26, V.T.C.S., the predecessor statute to section 711.009, is a "peace officer." The opinion concluded that a sexton is not among those individuals intended to be included within the meaning of peace officer under section 415.001 of the Government Code.

Nor, the opinion held, is a "cemetery association" a "law enforcement agency" as that term is used in chapter 415 of the Government Code.

Section 711.009 makes clear on its face that a "sexton, or other person in charge of a cemetery" possesses the authority of a peace officer only "in the cemetery . . . and as near the cemetery as necessary to protect cemetery property." It will be a question of fact in each particular instance as to what constitutes the area proximate to a cemetery "necessary to protect cemetery property," but we believe a court would find it to be whatever appears reasonable under the specific geographic circumstances.

We hold that section 711.009 of the Health and Safety Code limits the exercise of the powers granted therein to a cemetery and its surrounding area.

Yours very truly,



Rick Gilpin
Chairman
Opinion Committee

RG/lcd

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